ponding drop in the HCB Company's business is also 30%. 90% of the first plaintiff's work consists of guaranteed contracts and the commission is $2.80 per ton from each buyer and seller — making a total of $5.60 per ton. The remaining 10% are non-guaranteed contracts, and the total commissions from buyer and seller are $2.80 per ton. According to PW3, the first plaintiff's loss in share of commissions with his company during the six months period would be between $12,000 and $15,000 although earlier on he said it was between $25,000 to $50,000. These figures are his calculated guess. Be that as it may, I am satisfied that even from this one client alone the first plaintiff suffered a loss of between $12,000 and $15,000. The HCB Company paid the first plaintiff a total of $18,683.07 in commissions during the six-month period of absence. This would represent commissions that the first plaintiff would have earned from Bee Seng Company and similar clients. Taking other clients into consideration, the amount of commissions would be very much more than $18,000. By how much more, it is difficult to assess. It might be twice the amount or less. Although it is difficult to find a broker of first plaintiff's experience, there is no evidence that an attempt had been made to get another broker as a substitute to mitigate the loss. Taking everything into consideration, I would assess the loss at $6,000 for the six-month period. In short, the first plaintiff would in all probabilities have earned in brokerage commissions $6,000 more than the sum of $18,683.07 paid voluntarily by the HCB Company. In my view, the assessment is a very conservative one having regard to the commissions derived from just one client. This is not a case where there is insufficient evidence to support the first plaintiff's claim for damages. In my view, this case is not in the same category as *Bonham-Carter* v. *Hyde Park Hotel, Ltd.*,[7] a case referred to by the Federal Court in *Sum Kum* v. *Devaki Nair & Anor.*[8] The evidence of the first plaintiff (PW1), the director of the HCB Company (PW2) and a client of the HCB Company (PW3), are sufficient to prove damages as pleaded. PW3 is prepared to produce the records of his company to support his evidence as to transactions between his company and the HCB Company, but counsel for the defence has elected not to pursue the matter further. In the event, I consider the evidence of PW1, PW2 and PW3 as reliable as a basis for assessing damages in the absence of any evidence by the defence.

Accordingly, I enter judgment for the first plaintiff in the sum of $13,500 as general damages ($7,500 for pain and suffering and loss of amenities and $6,000 for loss of earnings on brokerage commissions), and in the sum of $24,742.32 as special damages on condition that out of the sum of $24,742.32, the sum of $24,331.82 is to be paid to the HCB Company. Defendants are also to pay interest at 6% per annum on general damages from date of service of writ (April 15, 1975) and at 3% per annum on $410.50 of the special damages from date of accident (July 11, 1972) to date of judgment and costs to be taxed.

Claim allowed.

Solicitors: *Murphy & Dunbar; Loke Kok Cheong.*

YASIN BIN WAHAB v. LOO KOK WAI

[O.C.J. (Mohamed Azmi J.) June 29, 1979]
[Kuala Lumpur — Civil Suit No. 1602 of 1976]

Damages — General damages — Quantum — Fracture of mandible and dental injuries — Deep laceration of forearm with keloid formation — Plaintiff awarded $19,000.

The plaintiff in this case was 26 years old and employed as a telegram messenger at the date of collision caused by the defendant's negligence. He claimed for damages for personal injuries sustained by him as a result of the said collision. The plaintiff suffered deep laceration of the left forearm with 3½ inches by ¼ inch with keloid formation; laceration on lower chin and ventral surface of the tongue; laceration of buccal mucosa (cheek region), slight ecchymosis of lower eyelids, fracture of the left mandible (lower jaw), fracture of the maxilla (upper jaw), fracture of alveolar bone and loss of five teeth. The fractured mandible had united soundly but the plaintiff still suffered discomfort on side to side movement of the mandible.

Held, allowing the plaintiff's claim:- general damages were awarded in the sum of $19,000 taking into account the overlapping factor. General damages were assessed in the following manner:- deep laceration of the left forearm with 3½ inches by ¼ inch with keloid formation ($1,500); fracture of the left mandible ($7,500); fracture of the maxilla ($7,000); fracture of alveolar bone ($4,500); loss of five teeth ($5,000).

Cases referred to:-

(1) *M. Alagappan s/o Muthuraman* v. *The Government of the Republic of Singapore & Anor.* [1967] 1 M.L.J. xl.

(2) *Tan Heng Lin & Anor.* v. *Tay Choon But* [1968] 1 M.L.J. xliii.

(3) *Dass* on Quantum in Accident Claims, p. 205.

(4) *Oh Chwee Neo* v. *Khoo Han Sway* [1970] 2 M.L.J. xx.

(5) *Jenny Yu & Anor.* v. *Pool & Anor.* [1967] 1 M.L.J. lxi.

(6) *Poh San Keng & Anor.* v. *Poh Bar Chian* [1968] 1 M.L.J. xxi.

(7) *Muslim bin Arip* v. *Gue Kee Peng* [1975] 1 M.L.J. xlv.

The following cases were also referred to in argument: *Paramasivam & Anor.* v. *Abdul Aziz & Ors.* [1976] 2 M.L.J. 91; *Sathiasaseelan* v. *V. Krishnasamy & Anor.* K.L. High Court Civil Suit No. 981/74 (unreported).

CIVIL SUIT.

R.K. Nathan for the plaintiff.

W. Abraham for the defendant.

Cur. Adv. Vult.

Mohamed Azmi J.: This is a claim for damages for personal injuries sustained by the plaintiff on August 11, 1975 when the motorcycle on which he was riding was knocked down by motorcar BY 3100 driven by the defendant at the junction of Jalan Pudu/ Jalan Shaw, Kuala Lumpur.

On liability, the defendant concedes that he is wholly to blame for the collision. The only issue for determination is on quantum of general damages for pain and suffering, and loss of amenities.

From the Statement of Agreed Facts, it is agreed by the parties that as a result of the said collision, the plaintiff suffered injuries as stated in the medical reports. There are four medical reports in the Agreed Bundle of Documents —

AB.1 — Medical Report of Dr. Ng Kam Sood, Orthopaedic Department, General Hospital, Kuala Lumpur, dated October 27, 1975.

AB.3 — Undated Medical Report of Dental Surgeon of General Hospital, Kuala Lumpur.

AB.4 — Specialist Report by Mr. T.A. Paraman, a Consultant Surgeon dated April 20, 1976.

AB.6 — Specialist Report by Dr. A. Pathmanathan, a Dental Surgeon, dated April 20, 1976.

According to Medical Report AB.1, Dr. Ng examined him on admission on August 11, 1975 and found injuries on his left forearm and jaw. There were swelling, deformity and deep laceration to the left forearm. There were also swelling and tenderness over the left side of the mandible (lower jaw). X-rays revealed fracture of the left mandible. He was referred to the Dental Medical Officer for management of his fractured jaw. The deep lacerations on the left forearm were sutured. The plaintiff made satisfactory progress and was discharged on August 26, 1975 to be followed up in Orthopaedic Clinic.

On reference to the Dental Medical Officer for the fractured jaw, the following injuries were found:—

(1) Lacerations lower chin and ventral surface of tongue.

(2) Laceration of buccal mucosa in the region of

$$\frac{\text{1} \mid \text{1234.}}{\text{1} \mid \text{1234.}}$$

(3) Slight ecchymosis of lower eye lids.

(4) Fracture of alveolar process in the region of

$$\frac{\text{321} \mid \text{12345.}}{\text{321} \mid \text{12345.}}$$

(5) Fracture of maxilla (upper jaw).

(6) Luxated teeth are the following $\frac{3 \mid 123}{ \mid 4}$

Treatment and suturing were done for the lacerations. The fractured fragments of maxilla brought together (reduced) by fitting connecting wires. Skull cap was fitted and maxilla immobilized under general anaesthesia. Treatment was terminated on September 29, 1975.

On residual disabilities, the Specialist Report of Mr. Paraman shows that the plaintiff's general condition is good. Arising out of the left forearm injuries, movements of the left elbow and forearm show no limitation, but he has an irregular 3½ inches by ¾ inch scar over the front of the left forearm with some keloid formation. As regards the jaw, the fracture of the mandible has united soundly. There is no deformity and the occlusion (bite) is good. The plaintiff, however, complains of slight discomfort on side to side movement of the mandible. The Specialist Report of Dr. Pathmanathan, the Dental Surgeon, reveals that the plaintiff complains of several teeth being sensitive to hot and cold water. There is no residual asymmetry of his face as a result of the incident. The fracture union of the maxilla is good with no residual paresis. The mandible is normal. The temporomandibular joint functions are also normal. However, the general condition of the teeth is poor. The trauma has resulted in $\overline{21 \mid 1245}$ becoming non-vital teeth. These teeth are the current cause of his complaints. Endodontic treatment (root-canal treatment) is required for $\overline{\mid 45}$. The same two teeth may require surgical treatment (apisectomy) if they do not respond to root-canal treatment. Total cost of treatment will be $400, and period of incapacity from work as a result of such surgery will be one week.

In assessing damages for pain and suffering and loss of amenities, I have taken into account that the plaintiff was 26 years old and employed as a telegram messenger at the date of collision. He was hospitalized for about fifteen days, from August 11 to 26, 1975, and after that was treated as an outpatient at the Orthopaedic Clinic. As for dental treatment pertaining to his fractured jaw, it went on till September 29, 1975 — a period of about 1½ months from date of incident. During these periods, the plaintiff must have suffered considerable pain and suffering, particularly due to the jaw and dental injuries. In this case, I find it convenient to assess each injury individually and then award a lump sum after taking into account overlapping in the assessment.

For the deep laceration of the left forearm with 3½ inches by ¾ inch with keloid formation; laceration on lower chin and ventral surface of the tongue; and laceration of buccal mucosa (cheek region), counsel for plaintiff suggests a figure of $3,500. Counsel for the defendant, however, says that $1,200 is more appropriate. Having regard to the fact that these lacerations have completely healed except the scar over the left forearm with keloid formation, I assess the sum of $1,500 as fair and reasonable.

For the fracture of the left mandible (lower jaw), counsel for plaintiff suggests $10,000 based on the award made in *M. Alagappan s/o Muthuraman* v. *The Government of the Republic of Singapore & Anor.*[1] Counsel for defendant submits $5,000 is sufficient, having regard to the case of *Tan Heng Lin & Anor.* v. *Tay Choon But.*[2] On this item, although the fractured mandible has united soundly, there is a residual disability, in that the plaintiff still suffers discomfort on side to side movement of the mandible. Under the circumstances, I assess a figure of $7,500.

For the fracture of the maxilla (upper jaw), counsel for the plaintiff suggests a figure of $7,000, but defence counsel's figure is $6,000. Based on *M. Alagappan's* case (*ante*) and having regard to the fact that the fractured fragments of the maxilla had to be brought together by fitting connecting wires and the maxilla was immobilized under general anaesthesia, I am of the view that an assessment of $7,000 is fair.

As regards fracture of alveolar bone or alveolar process, counsel for plaintiff suggests a sum of $12,000 on the ground that it was the cause of the loss of teeth on the upper jaw. Counsel for defendant, however, suggests a figure of $3,000 only. Having considered the case of *Tan Leong Thuan* v. *Ang Ah Sai,*[3] I assess a figure of $4,500.

For the loss of five teeth, counsel for the plaintiff recommends the sum of $8,500 based on the cases of *Oh Chwee Neo* v. *Khoo Han Sway;*[4] *Jenny Yu & Anor.* v. *Pool & Anor.;*[5] and *Poh San Keng & Anor.*

v. *Poh Bar Chian.*[6] Counsel for the defendant, however, suggests a figure of $3,750 based on *Muslim bin Arip* v. *Gue Kee Peng*[7] where $1,500 was awarded for loss of two teeth. Under this item, I take into consideration residual disabilities arising from the loss of the five teeth. As a result of these injuries, the condition of the remaining teeth is poor. The trauma has resulted in the lower teeth $\frac{21}{45}$ | $\frac{1245}{}$ becoming non-vital teeth. These teeth are the current cause of his complaints that several teeth being sensitive to hot and cold water. I have taken into account that two of the lower teeth $\frac{45}{}$ can be cured by endodontic treatment, failing which apisectomy (surgical treatment) is recommended at a total cost of $400. Having regard to all these factors, I am of the view a figure of $5,000 would be reasonable.

Adding the assessment of all these five injuries together, a total sum of $25,000 is obtained. Since all the three fractures and the loss of teeth are interconnected, there is considerable overlapping in this case. A sum of $6,000 should therefore be deducted, leaving a figure of $19,000 which, I think, is fair and reasonable and not out of line with most of the awards given for similar injuries.

Accordingly, I enter judgment for the plaintiff in the sum of $19,000 as general damages and costs, and I also order interest to be paid at 6% per annum on the general damages from date of service of writ to date of judgment.

Claim allowed.

Solicitors: *R.K. Nathan; Shearn, Delamore & Co.*

WIGGINS TEAPE (M) SDN. BHD. v. BAHAGIA TRADING SDN. BHD.; THE EAST ASIATIC CO. LTD. & ORS. AS OBJECTORS

[A.C.J. (Vohrah J.) November 10, 1979]

[Kuala Lumpur — Application for Execution No. 39 of 1977]

Land Law — Land charged — Machinery affixed to land — Machine still on hire-purchase — Whether machinery fixture.

Charge — Priority — Land charged — Machine affixed to land — Machine still on hire-purchase — Chargee having prior claim over owner of machine.

This was an appeal from the Senior Assistant Registrar's decision that an offset printing machine be released to the second objectors, MIMB, instead of the first objectors, EAC, after an enquiry on an interpleader summons arising out of the plaintiffs' application for a writ of execution against the defendants upon a judgment in default of defence. EAC claimed to be the owners of the said machine on the basis of a hire-purchase agreement under which a balance of $57,443.19 was still unpaid. MIMB, however, claimed that the machine which was affixed to the floor of the premises by bolts was a fixture and formed part of the land of which they were the chargees.

Held, dismissing the appeal: the principles relating to what constitutes a fixture must be the same whether they relate to land which is mortgaged or to land which is charged. In the result, the Senior Assistant Registrar was right in deciding that MIMB had a prior claim as against EAC to the machine.

Cases referred to:-

(1) *The Shell Company of the Federation of Malaya Ltd.* v. *Commissioner of the Federal Capital of Kuala Lumpur* [1964] M.L.J. 302.

(2) *Holland* v. *Hodgson* L.R. 7 C.P. 328, 335.

(3) *Reynolds* v. *Asbhy & Son* [1904] A.C. 466. H.L.

APPLICATION FOR EXECUTION.

Wong Soon Foh for the first objector.

C. Dass for the second objector.

Cur. Adv. Vult.

Vohrah J.: This is an appeal from the decision of the Senior Assistant Registrar ordering that an original Heidelberg offset printing machine (hereinafter referred to as "the machine") be released to the second objectors, Malaysian International Merchant Bankers (MIMB), instead of the first objectors, The East Asiatic Co. Ltd. (EAC), after an enquiry on an interpleader summons (Enclosure 21) arising out of the plaintiffs' application for a writ of execution (Enclosure 2) against the defendants upon a judgment in default of defence.

EAC claim to be the owners of the machine on the basis of a hire-purchase agreement executed on August 24, 1974 (Exhibit LTOI of Enclosure 29) under which, out of a total sum of $289,203.19, a sum of $57,443.19 was still owing to them from the defendants and in consequence of this balance sum being unpaid they claim that they still retain the ownership of the machine. MIMB, however, contend that since the whole of the premises of the defendants was charged to them by a charge document dated March 31, 1976 and duly registered on April 7, 1977 the machine which is affixed to the floor and ground of the said premises by bolts is a fixture and forms part of the land and has accordingly passed as security to them along with the premises giving them priority as legal mortgagees.

The first question I have to consider is whether the machine was transferred by EAC to the defendants as a result of an outright sale in pursuance of the sale agreement dated July 18, 1974 (Exhibit 'B' of Enclosure 57) or of the hire-purchase agreement dated August 24, 1974 (Exhibit 'A' of Enclosure 58). From the evidence of the manager of the printing department of EAC, who was the deponent of two affidavits affirmed on May 25, 1977 (Enclosure 29) and on February 16, 1978 (Enclosure 58) and who was called to the witness stand under the provisions of Order 38 rule 1, I am satisfied that the defendants' rights to the machine are derived from the hire-purchase agreement. That being the case the next and decisive question I have to consider is whether or not the machine has become affixed to the land having regard to the existence of the hire-purchase agreement on the one hand and that of the charge on the other.

It is not disputed that the machine is affixed by bolts to the floor and ground of the premises at Nos. 36 and 38 Jalan Ampang, Kuala Lumpur occupied by the defendants and comprised in land held under Lot Nos. 5584 and 5585. Nor is it disputed that all this land has been charged to MIMB as security for a loan by way of a charge document dated March 31, 1976 and registered on April 7, 1977.